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In re Application of	:	
KREMERS et al.	:	
Application No.: 09/890,503	:	DECISION ON
PCT No.: PCT/EP00/00479	:	
Int. Filing Date: 22 January 2000	:	RENEWED PETITION
Priority Date: 01 February 1999	:	
Attorney Docket No.: 521.1004	:	UNDER 37 CFR 1.181
For: SELF-RECOVERING CURRENT-LIMITING	:	
DEVICE WITH LIQUID METAL	:	

This is a decision on applicants' "Renewed Petition Under 37 CFR 1.181 to Withdraw the Holding of Abandonment" filed in the United States Patent and Trademark Office (USPTO) in the above referenced application on 25 April 2003 and refiled via facsimile on 23 April 2004. No petition fee is required.

#### **BACKGROUND**

On 13 September 2001, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) and the surcharge for filing the oath or declaration after the thirty month period were required. A two month period of time was set to respond to the Notification with extensions of time available under 37 CFR 1.136(a).

On 13 November 2002, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed to applicants indicating that applicants had failed to respond to said Notification of Missing Requirements within the time period set forth therein.

Applicant submitted a petition under 37 CFR 1.181 on 27 November 2002, requesting withdrawal of the holding of abandonment. Applicant provided a copy of the executed declaration allegedly deposited on 02 November 2001 and allegedly received in the USPTO on 04 February 2002 along with a itemized postcard receipt date-stamped 04 February 2002. However, the declaration was not itemized on the USPTO date-stamped post card receipt. On 14

April 2003, a decision dismissing applicant's petition was mailed indicating that applicant had not provided proof that the two page declaration was filed on 04 February 2002..

In the renewed petition petitioner filed on 25 April 2003, counsel indicates that the postcard receipt date-stamped by the USPTO 04 February 2001 contains a typographical error; that is, the indication that an assignment was enclosed was in error. The postcard should have indicated that a declaration was enclosed.

### DISCUSSION

The original declaration is not found in the application file. The copy of the postcard receipt date-stamped 04 February 2002 does not indicate that the executed declaration was filed but that a 2 page assignment was submitted.

Applicant requests reconsideration of the 14 April 2003 decision. In his 23 April 2003 request for reconsideration, applicant alleges that he responded to the Notice of Missing Requirements, contrary to the indication on the Notification of Abandonment. Counsel argues that the postcard "clearly indicated the submission of a response to the Notice of Missing Requirements". Counsel also contends that the itemized postcard receipt date-stamped by the USPTO "04 February 2002" contained a typographical error and the postcard receipt should have indicated that a "declaration" was filed. Counsel asserts that "The postcard erroneously itemized an executed assignment instead of an executed declaration. This was a secretarial, typographical error on the postcard only." The submission of the assignment is not considered a *bona fide* response to the Notification of Missing Requirements. The Notification of Abandonment was properly issued on 13 November 2002.

As stated in the MPEP, a postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon, on the date stamped thereon by the USPTO. However, the post card receipt does not serve as *prima facie* evidence of receipt of *any item which is not adequately itemized on the postcard*. Each separate component should be specifically and properly itemized on the postcard.

Upon return of a postcard receipt from the USPTO, the postcard receipt should be promptly reviewed by the person who filed the items to ensure that every item specifically denoted on the postcard was received by the USPTO. Where the postcard receipt does not indicate that a particular item was received by the USPTO, the postcard receipt will not serve as *prima facie* evidence of receipt of that item in the USPTO. See MPEP §503, p.500-15.

In the instant case, the application file does not contain the declaration allegedly submitted by applicant on 04 February 2002. The Office relies upon its official record of the contents of such correspondence in absence of convincing evidence (e.g., a postcard receipt under MPEP § 503 containing specific itemization of the document(s) or fee(s) purported to have been filed with the correspondence at issue) that the Office received and misplaced these documents that are not among the official records of the Office. (p. 500-14). Applicant has not provided any proof that the declaration was actually filed on 04 February 2002.

Without proof of the submission of an executed declaration within the time period set forth in the Notification of Missing Requirements, the application remains abandoned for failure to timely respond to the Notification of Missing Requirements with a proper reply; that is, providing an oath or declaration executed by the inventors, in compliance with 37 CFR 1.497(a) & (b), which properly identifies the application. The submission of an assignment on 04 February 2002 is not a *bona fide* or proper reply to the Notification of Missing Requirements.

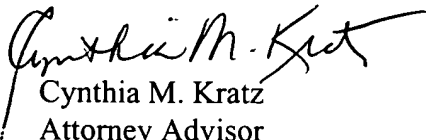
Applicant has not provided proof that the declaration was received in the USPTO on 04 February 2002. Accordingly, it is inappropriate to withdraw the holding of abandonment. The application remains abandoned. Applicant may wish to consider filing a petition to revive under 37 CFR 1.137(a) or (b) in a timely manner and is advised to review MPEP §711.03(c) for further instructions.

Finally, it is noted that the copy of the declaration submitted with the renewed petition is defective; in that, the citizenship of the named inventors does not appear on first page of the declaration. The citizenship appears to have been cut off during reproduction. Thus, the declaration is not in compliance with 37 CFR 1.497(a) & (b) and is unacceptable. Applicant is advised to file another executed copy of the declaration which includes the citizenship of the inventors. In the event that applicant's copy of the declaration does not include the citizenship of the inventors, a newly executed declaration is required which identifies the citizenship of the inventors and is in compliance with 37 CFR 1.497(a) & (b).

#### CONCLUSION

For the reasons stated above, the petition under 37 CFR 1.181 is **DISMISSED** **WITHOUT PREJUDICE**. The application remains **ABANDONED**.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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